

FILED
Clerk
District Court

MAY - 8 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

David Lochabay
Asst. Attorney General
OFFICE OF THE ATTORNEY GENERAL
2nd Fl., Juan A. Sablan Admin. Bldg.
Capital Hill
Caller Box 10007 CHRB
Saipan MP, 96950
Tel: 664-2341
Fax: 664-2349
E-mail: lochabay@gmail.com
Attorneys for Jonas Barcinas

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

HOMAYAN KABIR,

) **No. CV 07 0034**

Plaintiff,

v.

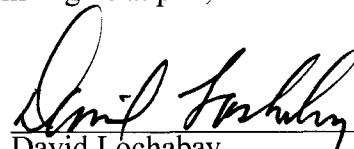
) **NOTICE OF APPEAL**

**CNMI PUBLIC SCHOOL SYSTEM, and
JONAS BARCINAS**

Defendants.

NOTICE is hereby given that Defendant Jonas Barcinas hereby appeals to the United States Court of Appeals for the Ninth Circuit that portion of the District Court's Order Granting Defendants' Motion to Dismiss Defendant Barcinas from the First Claim for Relief and Denying Motion to Dismiss Him from Fourth Claim for Relief (sic) which denies his motion to be dismissed from the Fourth Claim for Relief and have the Commonwealth of the Northern Mariana Islands substituted as the defendant in his stead for that claim. This Order was entered in this action on May 2, 2008. A copy of the Order is attached to this Notice, and the portion appealed from begins at p. 2, line 16.

Dated this 8th day of May, 2008.



David Lochabay
Asst. Attorney General
Office of the Attorney General
Caller Box 10007 CHRB
Saipan, MP 96950
Tel: (670) 664-2331 (Desk) 2341 (Office)
Fax: (670) 664-2349
E-mail: lochabay@gmail.com

Attorneys for Defendant Jonas Barcinas

ORIGINAL

FILED
Clerk
District Court

MAY - 2 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

HOMAYAN KABIR,)	Civil Action No. 07-0034
)	
Plaintiff)	ORDER GRANTING
)	DEFENDANTS' MOTION
v.)	TO DISMISS DEFENDANT
)	BARCINAS FROM THE FIRST
JONAS BARCINAS, et al.,)	CLAIM FOR RELIEF and
)	DENYING MOTION TO
)	DISMISS HIM FROM FOURTH
Defendants)	CLAIM FOR RELIEF
_____)	

THIS MATTER came before the court on Thursday, May 1, 2008, for hearing of defendants' motions to dismiss defendant Barcinas from the first and fourth claims for relief and to substitute in his place as defendant the Commonwealth in plaintiff's fourth claim for relief. Plaintiff appeared by and through his attorney, Joseph E. Horey; defendant Commonwealth Public School System appeared by and through its attorney, Karen Klaver; defendant Jonas Barcinas appeared by and through his attorney, Commonwealth Assistant Attorney General David Lochabay.

1 THE COURT, having considered the written and oral arguments of the
2 parties, grants the motion to dismiss defendant Barcinas from the first claim for relief
3 and denies defendants' motion to dismiss him from the fourth claim for relief and to
4 substitute in his place as defendant the Commonwealth of the Northern Mariana
5 Islands.
6

7
8 Plaintiff concedes that Title VII, 42 U.S.C. § 2000e *et seq.*, does not provide a
9 separate claim for relief against supervisors and co-workers. *See Craig v. McO*
10 *Agencies, Inc.*, 496 F.3d 1047, 1058 (9th Cir. 2007) (affirming the dismissal of a Title
11 VII cause of action against plaintiff's supervisor and alleged sexual harasser).
12 Accordingly, defendant Barcinas' motion to be dismissed from the first claim for
13 relief is granted, with prejudice.
14

15
16 Defendants argue that Barcinas should be dismissed from the fourth claim for
17 relief for assault and battery and that the Commonwealth should be substituted as
18 defendant in his place. Defendants' recitation of the recent changes in
19 Commonwealth law is accurate in all respects but one: the changes apply only to
20 *negligence* claims against the Commonwealth and not, as here, a claim based upon the
21 *intentional* tort of assault and battery. None of the recently-enacted changes to
22 Commonwealth law changed 7 N.Mar.I. Code § 2204, the statute from which
23 plaintiff's claim derives. Thus, the Attorney General's purported certification that
24 defendant Barcinas was acting within the scope of his employment is simply
25
26

1 irrelevant for allegations of intentional torts. Accordingly, defendants' motion to
2 dismiss defendant Barcinas from the fourth claim for relief is denied and the
3 Commonwealth will not be substituted in as defendant in his place.
4

5 IT IS SO ORDERED.

6 DATED this 2nd day of May, 2008.
7
8
9

10 
11 ALEX R. MUNSON
12 Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26